

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Compliance Assistance

4 (Amendment)

5 401 KAR 11:050. Operator certification.

6 RELATES TO: KRS 223.160-220, 224.10-110, 224.10-420(2), 224.73-110

7 STATUTORY AUTHORITY: KRS 223.160-220, 224.10-100, 224.10-110, 224.73-110

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet
9 to promulgate administrative regulations concerning the certification of water and wastewater
10 operators. This administrative regulation establishes application and examination procedures;
11 provisions relating to certificate issuance, renewal, and termination; reciprocity; training; and
12 disciplinary actions.

13 Section 1. Application and Examination for Certification. (1) An individual desiring to
14 become a certified operator shall first meet the qualifications specified in 401 KAR 11:030 or
15 11:040 and then pass an examination administered by the cabinet.

16 (2)(a) An applicant for certification shall complete the Registration Form for Exams and
17 Training and Education and Experience Documentation Form and shall submit them and the
18 certification application fee to the cabinet.

19 (b) An application shall not be submitted to the cabinet unless the applicant has met the
20 qualifications for examination.

(3)(a) After receipt of the completed forms and the application fee, the cabinet, considering the recommendation of the board, shall determine if the applicant meets the qualifications specified in 401 KAR 11:030 or 11:040.

(b) If the applicant meets the qualifications, the cabinet shall approve the application and notify the applicant of the scheduled exam date.

(4)(a) Upon the applicant's completion of the examination, the cabinet shall notify the applicant of the applicant's examination score.

(b) A score of at least seventy (70) percent is required to pass the examination.

(5)(a) The cabinet shall issue a certificate and a wallet card to an applicant who successfully passes the certification examination.

(b) The certificate and wallet card shall designate the certification classification for which the operator has demonstrated competency.

(6) An applicant who fails to pass an examination may apply to take the examination again by resubmitting the ^{["}Registration Form for Exams and Training^{"]} and the application fee to the cabinet.

(7)(a) An examination shall not be returned to the applicant, but results may be reviewed by the applicant with a member of the cabinet.

(b) A request for a review shall be submitted to the cabinet in writing.

(8) A certificate shall~~may~~ be issued in a comparable classification, without examination, to a person who holds a valid certificate in a state, territory, or possession of the U.S.~~[United States]~~ if:

(a) The requirements for certification under which the certificate was issued are not less stringent than the requirements for certification established~~[set forth]~~ in KRS ~~[Chapter]~~ 223.160-

1 220, 224.73-110, and 401 KAR Chapter 11; and

2 (b) The applicant submits an Application for Reciprocity form and the reciprocity fee to the
3 cabinet.

4 Section 2. Duration of Certification. (1)(a) Wastewater certifications~~[Certifications]~~ shall
5 expire on June 30 of odd-numbered years unless suspended, revoked, or replaced by a higher
6 classification certificate before that date.

7 (b) Wastewater certifications~~[Certifications]~~ issued on or after January 1 and on or before
8 June 30 of an odd-numbered year shall expire on June 30 of the next odd-numbered year.

9 (2)(a) Drinking water certifications shall expire on June 30 of even-numbered years unless
10 suspended, revoked, or replaced by a higher classification certificate before that date.

11 (b) Drinking water certifications issued on or after January 1 and on or before June 30 of an
12 even-numbered year shall expire on June 30 of the next even-numbered year.

13 (3)~~[(2)]~~(a) An expired certification shall continue in force pending the administrative
14 processing of a renewal if the certified operator has complied with the renewal requirements of
15 Section 3 of this administrative regulation.

16 (b) A certification continued in accordance with this subsection~~[under this paragraph]~~ shall
17 remain fully effective and enforceable.

18 (4)~~[(3)]~~ A certification shall terminate if not renewed on or before December 31 of the year
19 the certification expired.

20 Section 3. Continuing Education and Certification Renewal. (1) A certified operator who is
21 not designated an Operator in Training may renew a certification without examination
22 if~~[provided]~~ the operator has:

23 (a) Accumulated the training hours required in subsection (5) of this section; and

(b) Submitted a completed Application for Certification Renewal form and the renewal fee to the cabinet or has renewed the certification electronically on the cabinet's Web site.

(2)(a) A certified operator who is designated an Operator in Training may renew a certification without examination if the operator has satisfied the requirements of subsections (1)(a) and (b) of this Section and has acquired one (1) year of acceptable experience prior to expiration of the certification.

(b) Upon renewal, the operator's~~[operators]~~ certification status shall not continue to ~~[will no longer]~~ be designated an Operator in Training.

(3) If the Application for Certification Renewal form, which is incorporated by reference in Section 5 of this administrative regulation, and the renewal fee are not received by the cabinet or submitted electronically by June 30 of the year the certification expires, a late renewal fee shall be paid.

(4)(a) A terminated certification shall not be renewed.

(b) An operator whose certification is terminated and who wishes to become recertified shall reapply for and pass an examination in accordance with Section 1 of this administrative regulation.

(5)(a) Prior to applying for certification renewal, a certified operator shall complete the required number of cabinet-approved training hours.

(b) A certified operator holding multiple wastewater certifications issued in accordance with this administrative regulation ~~[both a treatment and a collection certificate]~~ shall complete the required number of cabinet-approved training hours for the highest certificate held in lieu of completing the required number of continuing education hours required for each~~[both]~~ certificate[s].

1 (c) A certified operator holding multiple water certifications issued in accordance with this
2 administrative regulation shall complete the required number of cabinet-approved training hours
3 for the highest certificate held in lieu of completing the required number of continuing education
4 hours required for each certificate.

5 (d)[(e)] Hours earned prior to initial certification shall not count toward certification renewal.

6 (e)[(d)] Wastewater training[Training] hours shall expire two (2) years from the date earned.

7 (f) Water training hours shall be completed for each renewal during the two (2) year period
8 immediately prior to the certificate expiration date.

9 1. Certified operators with a Bottled Water, Limited, Class I or II Treatment, Collection, or
10 Distribution[~~or Class I or II Collection~~] certification shall complete twelve (12) hours of
11 approved training; or

12 2. Certified operators with a Class III or IV Treatment, Collection, or Distribution[~~or Class~~
13 ~~III or IV Collection~~] certification shall complete twenty-four (24) hours of approved training.

14 (6)(a) A training provider seeking approval of certified operator training shall submit to the
15 cabinet a completed Application for Approval of Courses for Continuing Education Credit form.

16 (b) Upon completion of the approved training, the provider shall submit to the cabinet a
17 completed Continuing Education Activity Report form.

18 (c) A certified operator who has attended training that has not been submitted to the cabinet
19 for approval may apply for training approval as established[~~provided~~] in paragraph (a)[a] of this
20 subsection.

21 (d) A certified operator who provides approved training shall[~~may~~] receive[~~upon approval~~
22 ~~of the cabinet,~~] hour-for-hour credit for actual instruction time.

23 (7)(a) Cabinet approval of training shall expire two (2) years following the date of approval.

1 (b) The cabinet, in consultation with the board, shall extend the approval expiration date if:

2 1. The provider requests the extension in writing; and

3 2. The training has not changed from the previous approval.

4 Section 4. Disciplinary Action. (1) A certified operator shall be subject to disciplinary action
5 if the cabinet, in consultation with the board, determines that the certified operator has not
6 satisfactorily performed the operator's duties in accordance with 401 KAR 11:020.

7 (2)(a) A written complaint received by the board or cabinet regarding a certified operator,
8 unless duplicitous or frivolous, and violations of 401 KAR 11:020 that are identified by the
9 cabinet shall be evaluated by the board.

10 (b) The certified operator shall appear before the board if requested by the board.

11 (3) The board shall make a recommendation to the cabinet regarding disciplinary action. The
12 board may recommend that disciplinary action not be taken or recommend that a disciplinary
13 action be taken if the board determines that the certified operator has not satisfactorily performed
14 operator duties in compliance with 401 KAR 11:020.

15 (4)(a) Upon receiving a recommendation from the board, the cabinet shall review the
16 available evidence.

17 (b) After completing the review, the cabinet shall initiate the recommended disciplinary
18 action or notify the board as to why an alternative disciplinary action was taken.

19 (5) A disciplinary action shall be commensurate with the severity, duration, and number of
20 the violations. Disciplinary actions may include:

21 (a) Probation of the operator's certification for a specified period of time, not to exceed one
22 (1) year;

23 (b) Suspension of the operator's certification for a specified period of time, not to exceed four

(4) years, during which the certification shall be considered void;

(c) Revocation of the operator's certification;

(d) Civil or criminal penalties; or

(e) A combination of the disciplinary actions established in paragraphs (a) through (d) of this subsection.

(6) If disciplinary action is taken, the cabinet shall notify the certified operator and the operator's employer by certified mail of the action, the reasons outlined for the action, and the length of time for which the disciplinary action shall apply.

(7)(a) A certified operator whose certification has been suspended shall not have primary responsibility during the period that the suspension remains in effect.

(b) Experience gained during a suspension shall not be included toward meeting the requirements of 401 KAR 11:030 or 11:040.

(8) If a certification is revoked, the operator shall be ineligible for future certification.

(9) A certified operator who is aggrieved by a disciplinary action may file a petition for hearing with the cabinet pursuant to KRS 224.10-420(2).

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Registration Form for Exams and Training", July 2009~~[May 2008]~~;

(b) "Education and Experience Documentation Form", July 2009~~[May 2008]~~;

(c) "Application for Certification Renewal", July 2009~~[May 2008]~~;

(d) "Application for Approval of Courses for Continuing Education Credit", July 2009~~[May 2008]~~;

(e) "Continuing Education Activity Report", July 2009~~[May 2008]~~; and

1 (f) "Application for Reciprocity", July 2009~~[May 2008]~~.

2 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law,
3 at the Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601,
4 Monday through Friday, 8 a.m. to 4:30 p.m.

401 KAR 11:050 "Operator certification." approved for promulgation:

7/13/09

Date

Henry C. A. List

Henry "Hank" List, Deputy Secretary FOR
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Julia Kays, Regulations Coordinator
Division of Compliance Assistance
300 Fair Oaks Lane
Frankfort, KY 40601
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 11:050

Contact Person: Aaron Keatley, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for certification application and examination procedures; issuance and renewals of certificates; and defines the process for taking disciplinary actions against noncompliant operators.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the provisions necessary for the certification of operators.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS Chapters 223.160-220, 224.10-110 and 224.73-110 which authorizes the cabinet to implement a certification program for water and wastewater system operators. This administrative regulation establishes standards for application and examination procedures; issuance and renewals of certificates for the certification of operators; and defines the process for taking disciplinary actions against noncompliant operators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the certification application and examination procedures, issuance and renewals of certificates and disciplinary actions as mandated by KRS Chapters 223.160-220 and 224.73-110.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendments contained in this proposed administrative regulation are to apply the conditions of 401 KAR 11:050 to drinking water treatment and distribution operators.

(b) The necessity of the amendment to this administrative regulation:

The amendments contained in this proposed administrative regulation are to apply the conditions of 401 KAR 11:050 to drinking water treatment and distribution operators.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendments contained in this proposed administrative regulation are to apply the conditions of 401 KAR 11:050 to drinking water treatment and distribution operators.

(d) How the amendment will assist in the effective administration of the statutes:

The amendments contained in this proposed administrative regulation are to apply the conditions of 401 KAR 11:050 to drinking water treatment and distribution operators.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified water and wastewater treatment plant, water distribution and wastewater collection system operators, as well as operators seeking certification, will be affected by this amended administrative regulation. There are approximately 4300 operators currently certified by the program. State or local governments that operate water or wastewater treatment plants, water distribution or wastewater collections systems will be indirectly affected by this amended administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certified operators, state and local governments, as well as operators seeking certification, will refer to this amended administrative regulation to determine the necessary procedures for obtaining and maintaining their certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Under this amended administrative regulation, individuals should not expect to experience any additional cost. Limited license will remain in effect for two years rather than the one year currently provided. This will reduce the need to renew the license as frequently and eliminate the need to retest if continuing education hours are obtained.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified operators, state and local governments, will refer to this amended administrative regulation to gain a clear understanding of the necessary procedures for obtaining and maintaining their certification. Individuals that become certified are authorized to operate a water or wastewater system as provided in KRS Chapters 223.160-220 and 224.73-110.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs are anticipated.

(b) On a continuing basis: No additional costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amended administrative regulation is funded through agency and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding will be required to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation will not directly or indirectly establish any fees.

(9) TIERING: Is tiering applied? (Explain why or why not). This amended administrative regulation clarifies the procedures necessary for obtaining and maintaining certification. Tiering is applied consistent with the various certification levels that are tiered based on the size of the water or wastewater treatment plant, water distribution or wastewater collection system.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 11:050

Contact Person: Aaron Keatley, Director

- 1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes X No

If yes, complete questions 2-4.

- 2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**
This amended administrative regulation relates to state or local governments that operate water or wastewater treatment plants, water distribution or wastewater collections systems.

- 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

Safe Drinking Water Act Title 42, Chapter 6A, Sub-chapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300j-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Primacy requirements; KRS Chapters 223.160-220, 224.10-100, 224.10-110, and 224.73-110.

- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation will not generate additional state or local government revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional state or local government revenue.

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This amended administrative regulation clarifies the procedures necessary for obtaining and maintaining certification. No fiscal impacts are anticipated.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 11:050

Contact Person: Aaron Keatley, Director

1. Federal statute or regulation constituting the federal mandate.

Safe Drinking Water Act Title 42, Chapter 6A, Sub-chapter VII, Part B, Section 300g-8 (Operator Certification) and Part E, Section 300j-12 (DW Revolving Loan Fund); 40 C.F.R. 142.16 on Special Primacy requirements.

2. State compliance standards.

KRS 223.160-220, KRS 224.10-110

3. Minimum or uniform standards contained in the federal mandate.

US Code Title 42, Chapter 6A, Subchapter XII, Part B, subpart 300g-8, provides the Safe Drinking Water Act (SDWA) guidelines for establishing an operator certification program at the state level (section 1419a of the Act). Final guidelines and additions to those guidelines were published in the February 5, 1999 and April 18, 2001 Federal Registers. Minimum standards for certification of operators take into account existing State programs, complexity of the water system, size of the water system, and other factors that provide an effective program at a reasonable cost. The Final Guidelines in the two Federal Registers cover public health objectives, anti-backsliding, baseline standards, system/operator classification, operator qualifications, enforcement, certification renewal and the resources needed to implement the program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?

No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not applicable.

**DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE
IN 401 KAR 11:050**

The following materials are incorporated by reference in 401 KAR 11:050:

- (1) This administrative regulation incorporates by reference “Registration Form for Exams and Training”, July 2009. This form captures the data associated with the registration for an examination or training event of an individual applying to become a certified operator in Kentucky.

This document consists of one (1) letter-sized page.

- (2) This administrative regulation incorporates by reference “Education and Experience Documentation Form”, July 2009. This form captures the data associated with the verification of education and experience of an individual applying to become a certified operator in Kentucky.

This document consists of two (2) letter-sized pages.

- (3) This administrative regulation incorporates by reference “Application for Certification Renewal”, July 2009. This form captures data associated with the renewal of a certification.

This document consists of one (1) letter-sized page.

- (4) This administrative regulation incorporates by reference “Application for Approval of Courses for Continuing Education Credit”, July 2009. This form captures the data associated with the request for approval of continuing education hours provided by a training provider other than the cabinet.

This document consists of four (4) letter-sized pages.

- (5) This administrative regulation incorporates by reference “Continuing Education Activity Report”, July 2009. This form captures the data associated with the continuing education credit earned from a course provided by a training provider other than the cabinet.

This document consists of one (1) letter-sized page.

- (6) This administrative regulation incorporates by reference “Application for Reciprocity”, July 2009. This form captures the data associated with the request for a certified operator from another state to become a certified operator in Kentucky.

This document consists of two (2) letter-sized pages.